

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 360] NEW DELHI, MONDAY, DECEMBER 19, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th December 1955

S.R.O. 3694.—Whereas the election of Shri Brijlal Nandlal Biyani, as a member of the Legislative Assembly of the State of Madhya Pradesh from the Akola constituency of that Assembly was called in question by an election petition presented by Shri Bhikaji Keshao Joshi of Ward No. 1, Akola and Shri Mukund Vinayak Dhamankar of Ward No. 1, Akola;

And whereas the Election Tribunal appointed by the Election Commission for the trial of the said petition dismissed it by an order dated the 1st May, 1953 and thereafter ceased to exist;

And whereas the Supreme Court of India on an appeal filed by the petitioners, aside the order of the Election Tribunal and sent the petition back for further enquiry and trial with a direction;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the Representation of the People Act, 1951 (XLIII of 1951) for the further trial of the said petition has, in pursuance of the provisions contained in section 103, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions contained in section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, AKOLA, MADHYA PRADESH,

ELECTION PETITION No. 158 OF 1952

Applicants/Electors:—

- (1) Bhikaji Keshav Joshi, aged 30 years, voter No. 488, shopkeeper, residing at Akola, Ward No. 1.
- (2) Mukund Vinayak Dhamankar, aged 50 years, voter No. 1053, shopkeeper, Akola, Ward No. 1.

Vs.

Non-applicants/Respondents:—

- (1) Brijlal Nandlal Biyani, Returned Candidate.

Unsuccessful candidates and pro forma respondents:—

- (2) Kamal Wasudeo Joglekar,
- (3) Bhimrao Ganpat Meshram,
- (4) Suryabhan Sakham Vaidya.

- (1) Shri V. L. Oke, Advocate.
 - (2) Shri R. K. Manohar, Advocate.
 - (3) Shri D. B. Ghaisas, Advocate.
 - (4) Shri W. H. Deshpande, Advocate.
 - (5) Shri B. N. Udasi, Pleader.
 - (6) Shri J. E. Sanjana, Pleader For Applicants.
 - (1) Shri M. N. Phadke, Advocate.
 - (2) Shri J. R. Chandurkar, Advocate.
 - (3) Shri V. B. Sapre, Advocate—For respdt. no. 1.
 - (1) Shri W. A. Sohoni, Advocate.
 - (2) Shri B. W. Sohoni, Pleader—For Respdts. 2 and 3.
- Respondent No. 4 in person.

ORDER

(Delivered this day the 28th November 1955, at Akola.)

1. The election for the Akola Constituency of the State Assembly of Madhya Pradesh was held on the 31st of December 1951. Respondents 1 to 4 were candidates contesting the said election. The nomination papers were filed on or before 15th November, 1951 and the scrutiny thereof was made on 17th November, 1951. The polling took place on the 31st December 1951. Respondent No. 1 was declared to have been duly elected and the result of the election was notified in the *Gazette* of the 4th April 1952.

2. The two petitioners, who are electors from the said constituency, filed this election petition on the 19th of April 1952 calling in question the election held for the Akola Constituency and that of the respondent no. 1 in particular on several grounds. The election Commission constituted a Tribunal for the trial of the petition at Akola. Respondent no. 1 appeared and filed a written statement. In his written statement, he raised certain preliminary objections regarding the maintainability of the petition, jurisdiction of the Tribunal and limitation, and prayed that the petition should be heard on those preliminary objections in the first instance. Respondent no. 1 craved leave to put in his written statement on the merits, if necessary, after the decision of the preliminary issues. The Tribunal decided the preliminary issues in favour of respondent no. 1 and dismissed the petition on the 1st of May 1953.

3. Against the decision of the Tribunal, the petitioners preferred Appeal No. 158/54 to the Supreme Court by special leave. That appeal was disposed of on the 2nd May 1955. The Supreme Court set aside the order of dismissal of the petition passed by the Tribunal and directed that the case should go back for enquiry and trial with reference only to (i) allegations in paragraphs 6(a), (b) and (c) of the petition and (ii) the allegations in paragraph 1, item 1 in Schedule "A" attached to the petition, and further directed that an appropriate Tribunal should be reconstituted for the purpose. In accordance with this direction, the Election Commission of India by their Notification No. 19-158-52 Elec. III-8622, dated the 29th July 1955 constituted this Tribunal.

4. That part of the petition, which the Supreme Court remitted for trial, consists of the allegations in paragraphs 6(a), (b) and (c) and the allegations in para. 1 of item 1 in Schedule "A" annexed to the petition. These are as below:—

- "6(a) The election of a candidate for the Madhya Pradesh State Assembly in the Single Member Akola Constituency was announced to be held on 31st December 1951. Nominations were to be filed on or before 15th November 1951 and scrutiny of nomination was due on 17th November 1951. At the time of scrutiny objection was taken to the nomination paper of respondent no. 1 on several grounds but the material grounds were that respondent no. 1 was disqualified for being chosen as and for being a Member of Madhya Pradesh State Assembly under Chapter III, Section 7(d) of the Representation of the People Act, 1951 (Act 43 of 1951). That the respondent no. 1 is disqualified to fill the seat under the Act, because he is the Managing Agent or Managing Director of Rajasthan Printing and Litho Works, a private limited company under the Indian Companies Act. He has, as a share-holder and director, interest in

contracts for supply of goods viz., stationery, paper and printing materials etc., to the State Government of Madhya Pradesh. He has also interest in contracts for the execution of works or performance of services, such as printing etc., undertaken by the State Government of Madhya Pradesh. The respondent no. 1 gets a share by way of commission on sales effected by the Limited Company. He has, therefore, by himself interest in the contracts of the company with the State Government of Madhya Pradesh.

6(b) The respondent no. 1 is a partner in the firm Berar General Agency. The said firm has entered into a contract for the performance of cloth distribution on behalf of the State Government to retailers and holds a licence for the same. The respondent no. 1, therefore, has interest by himself in the said contract for the performance of services undertaken by the Government.

6(c) The respondent no. 1 is the proprietor of the monthly Journal "Prawaha" and a by-weekly paper "Matri-bhumi". These publications print Government advertisements on contract basis. The respondent no. 1 has, therefore, interest in the said contract for the performance of services undertaken by the State Government, Madhya Pradesh.

The income derived from these contracts by the respondent no. 1 are noted in the private accounts of the respondent no. 1 and their details are shown in the profits and loss statements filed with the income-tax return of the respondent no. 1 for the relevant year and current year. The sales and other details of the "Matri-bhumi" concern are noted in the private accounts of the respondent no. 1.

Panagraph 1, item 1, in Schedule "A".

1. That in the month of December 1951, respondent no. 1 had been to the premises of Akola Shri Gurudwara, where the Local Sikh Community had assembled to listen to the recitation of the holy book "Gurth Saheb" on the 7th day of the death of a daughter of one Sardar Suratsingh. At this meeting respondent no. 1 canvassed for votes for himself and paid Rs. 201/-, apparently as donation to the Gurudwara, but really as gift for inducing the Sikh community in the Akola Constituency in general and the Sikhs assembled in particular to induce them to vote for himself at the ensuing election. Respondent no. 1 was guilty of bribery within the meaning of that term in section 123 of the Representation of the People Act".

5. Before the proceedings began, as directed by the Supreme Court, the petitioners were called upon to rectify the lacunae as to dates in the verification clauses of the petition and the schedule and they did so.

6. At the commencement of the proceedings, the petitioners put in an application for leave to administer a set of interrogatories to respondent no. 1. Respondent no. 1 also applied for calling upon the petitioners to submit further and better particulars regarding the allegations in paragraphs 6(a), (b) and (c) and item 1 in paragraph 1 in Schedule "A", and for leave to put in a supplementary written statement after the petitioners furnished further particulars. The Tribunal directed the petitioners to furnish further particulars with regard to paragraph 6(b) and paragraph 1, item 1 in schedule "A" and rejected the respondent no. 1's prayer for particulars in respect of paragraphs 6(a) and (c) and gave leave to respondent no. 1 to put a supplementary written statement. The petitioners furnished in compliance with the direction, further particulars with regard to paragraph 6(b) and paragraph 1, item 1 in Schedule "A" on the 18th of August 1955. Respondent no. 1 also put in a supplementary written statement on 28th August 1955. On 10th September 1955 the petitioners put in fresh interrogatories to be answered by the respondent no. 1 and those were answered by him.

7. Respondent no. 1 in his supplementary written statement denied the allegation that he was disqualified for being chosen as a candidate and for being a member of the Madhya Pradesh Legislature under Section 7(d) of the Representation of the People Act. He stated that he had severed all his connections with the concerns relating to which the disqualification was alleged. As regards para. 6(a) he admitted that the Rajasthan Printing and Litho Works were a private limited company registered under the Indian Companies Act and that he was a share-holder and the Managing Director of the said Company till 14th November 1951. He stated that on 14th November 1951, he resigned from the Managing Directorship and ceased to be the Managing Director or a Director, on

the acceptance of his letter of resignation on the same day by the Board of Directors. He further stated that he had transferred his shares in the said Company to Seth Radhakisan Toshniwal of Akola, and thus he ceased to have any share or interest in the said Company on 14th November 1951. He denied that the said Company had any contract for supply of goods, to or for the execution of any works or the performance of any services undertaken by the appropriate Government. He stated that the printing and other work which the said Company used to do, was not by virtue of any standing orders with the Government within the meaning of section 7(d) of the Representation of People Act; whenever any Government officer wanted to purchase any materials from, or to get some printing or other work done by the Company, he purchased those goods or the company executed the work at the rates, which the company usually charged for different types of work. It was, however, stated that the Company was carrying out orders of purchase of goods, or doing printing work in pursuance of particular orders placed from time to time by Government officers, but that there were no continuing contracts or standing orders in pursuance of which goods were supplied, or work was done by the Company and that thus there was no subsisting contract during the relevant period.

8. As regards paragraph 6(b), respondent No. 1 admitted that he was a partner of the firm Berar General Agency till 14th November 1951. He contended that he retired from the partnership on 14th November 1951 and that thereafter, he ceased to have any interest in or concern with the said firm. He admitted that the Berar General Agency held an "A" Class licence under the C. P. and Berar Cotton Cloth Trade Regulation Order, 1948 and that the said licence was annually renewed. It was stated that the whole-sale Cloth Dealers' Association, Akola, was formed and incorporated under the Indian Companies Act and that the said Berar General Agency was one of the members of that Association. He denied that there was any contract or agreement entered into between the said Association and the Government. He, however, stated that the Government had recognized the said Association as an Importer of cloth from Bombay and Ahmedabad as per cloth distribution scheme of the Government, but that there was no contract between the Association and the Government or with any-body for supply of any goods to the Government, or for the execution of any work undertaken by the Government within the meaning of Section 7(d) of the Representation of the People Act.

9. As regards the allegations in paragraph 6(c) respondent No. 1 denied that he was the Proprietor of the journals known as "Prawaha" and "Matribhumi". As regards Matribhumi, his case is that it was run as a Journal to carry on political and public activities to which respondent no. 1 was devoted. His contention was that on 14th November 1951, he had transferred all his rights and interest in that news paper to Shri V. R. Oke, Akola and hence, from that date, he ceased to have any interest or concern with the Matribhumi. According to him the Matribhumi used to publish occasionally advertisements of the Public Service Commission, Madhya Pradesh, but those were not contracts within the meaning of Section 7(d) of the Act. He denied that there was any subsisting contract during the relevant period between the Matribhumi and the Government. As regards the news paper Prawaha, he denied that that news paper had done any job for the Government.

10. In his written statement, respondent No. 1 denied that he maintained any private accounts of his own or that he had noted in the books of account any income derived from contracts between the Matribhumi and the State Government. He further stated that in the income tax returns filed by him, no income from these two news papers had been shown. He denied that the news papers Matribhumi and Prawaha were yielding any profits.

11. As regards paragraph 1 item 1 in Schedule "A", respondent No. 1 admitted that he had gone to the Sikh Gurudwara at Akola on the 7th day of the death of a daughter of Sardar Surat Singh and that that visit of his was on 20th December 1951. He, however, denied that he had canvassed for votes for himself on that day in the Gurudwara or that he had paid Rs. 201/- or any sum as a donation to the Gurudwara in the meeting of 20th December 1951 or on any subsequent occasion or date what-so-ever. He denied that any such payment had been made to Jaimalsingh Gulabsingh, the Granthi of the Gurudwara.

12. It may be noted that the petitioners abandoned their allegations in regard to the news paper Prawaha.

13. On the pleadings, interrogatories and replies thereto, issues were framed as follows:—

ISSUES

(1) Whether the respondent No. 1 resigned his office of the Managing Director of the Rajasthan Printing and Litho Works, on 14th November 1951?

(2) Whether respondent No. 1 transferred all his shares to Radhakisan Toshniwal on 14th November 1951?

(3) Whether respondent No. 1 had, after, 14th November 1951, any interest in the Rajasthan Printing and Litho Works Ltd., Akola, so as to disqualify him from standing as a candidate in the election as alleged?

(4) Whether Rajasthan Printing and Litho Works Ltd., had continuing and existing contracts with the appropriate Government (Government of Madhya Pradesh) within the meaning of Section 7(d) of the Representation of the People Act?

(5) Whether respondent No. 1 was suffering from any disqualification on 15th November 1951, as alleged by the Petitioners?

(6) Whether respondent No. 1 retired from the partnership 'Berar General Agency' on 14th November 1951, as alleged?

(7) Whether respondent No. 1 continued to have any connection with Berar General Agency on and from 15th November 1951, till the conclusion of the election?

(8) Whether there was any contract between the whole-sale Cloth Dealers' Association, Akola, and the State Government for importing cloth from Bombay and Ahmedabad for distribution to retailers within the meaning of section 7(d) of the Representation of the People Act, as alleged by the petitioners?

(9) Did respondent No. 1 transfer all his interest in Matribhumi, on 14th November 1951 to Shri V. R. Oke?

(10) Whether publishing advertisements of the Public Services Commission, Madhya Pradesh in Matribhumi, occasionally, as alleged by respondent No. 1, amounts to having contracts with the Government, within the meaning of Section 7(d) of the Representation of the People Act?

(11) Whether respondent No. 1 canvassed for votes for himself on 20th December 1951, in the meeting assembled on that date in the Sikh Gurudwara, Akola?

(12) Whether respondent No. 1 paid Rs. 201/- on 26th December 1951 to Shri Jaimalsingh Granthi in the Gurudwara with a view to induce Sikh voters to vote for him?

(13) If so, has the respondent committed a corrupt practice of bribery within the meaning of Section 123 of the Representation of the People Act?

(14) Whether the election of the respondent No. 1 is liable to be set aside on any of the grounds alleged?

(15) What order?

FINDINGS

Issue No. 1	..	No.
Issue No. 2	..	No.
Issue No. 3	..	Yes.
Issue No. 4	..	Yes.
Issue No. 5	..	Yes; in respect of Rajasthan Printing and Litho Works, Akola, and the Berar General Agency.
Issue No. 6	..	No.
Issue No. 7	..	Yes.
Issue No. 8	..	Yes.
Issue No. 9	..	No.
Issue No. 10	..	No.
Issues Nos. 11 to 13	..	No.
Issue No. 14	..	Yes.
Issue No. 15	..	As per order below.

REASONS

14. The two main grounds on which the petitioners relied, were bribery and disqualification. Bribery is more serious than disqualification. Issues Nos. 11 to 13 relate to bribery and hence, we first deal with them.

15. It cannot be disputed that an election is liable to be set aside if a major corrupt practice is proved as against a candidate who is declared to be elected. So far as the present petition is concerned, a "major corrupt practice", as defined in Section 123, would be an act of bribery consisting of an offer or promise by

respondent No. 1 or his agent or by any other person with the connivance of respondent No. 1 or his agent, of any gratification to any person whom-so-ever, with the object, directly or indirectly of inducing that person to vote.

16. The petitioners' case regarding the allegations of corrupt practice is contained in paragraph 5 of their petition and the particulars thereof are stated in paragraph 1, item 1 of schedule 'A'. The portion of that paragraph with which we are concerned is as follows:—

"That in the month of December 1951, respondent No. 1 had been to the premises of the Akola Shree Gurudwara, where the local Sikh community had assembled to listen to the recitation of the holy book 'Granthi-Saheb' on the 7th day of the death of a daughter of one Sardar Suratsingh. At this meeting, respondent No. 1 canvassed for votes for himself and paid Rs. 201/-, apparently as a donation to the Gurudwara, but really as gift for inducing the Sikh Community in the Akola Constituency in general and the Sikhs assembled in particular to induce them to vote for himself at the ensuing election."

On a demand being made on behalf of respondent No. 1 for further particulars, the petitioners stated as below:—

"That on or about 20th December 1951, Rs. 201/- were paid to Shri Jaimalsingh Gulabsingh Granthi of Sikh Gurudwara of Akola, who passed a receipt for the same. On or about 20th December 1951, respondent No. 1 addressed the Sikh Community assembled for offering prayers for the departed soul of Sardar Surat Singh's daughter."

The petitioners were allowed to amend paragraph No. 1 of Schedule A to include these further particulars and the amended paragraph reads as follows:—

"That in the month of December 1951 respondent No. 1 had been to the premises of Akola Shree Gurudwara, where the Local Sikh Community had assembled to listen to the recitation of the holy book 'Granth-Saheba' on the 7th day of the death of a daughter of one Sardar Suratsingh. At this meeting respondent No. 1 canvassed for votes for himself on 20th December 1951 and that this was the first event in the series by which respondent No. 1 committed the offence of bribery and as a subsequent event in the same series paid Rs. 201/- on 26th December 1951, apparently as donation to the Gurudwara, but really as a gift for inducing the Sikh Community in the Akola Constituency in general and the Sikhs assembled in particular to induce them to vote for himself at the ensuing election. Respondent No. 1 was guilty of bribery within the meaning of that term in section 123 of the Representation of the People Act."

17. In reply to this allegation, respondent No. 1 in paragraph 4 of his supplementary written statement admitted that he had been to the Akola Sikh Gurudwara on the 7th day of the death of the daughter of Sardar Suratsingh and that it was on 20th December 1951. He, however, denied that he had canvassed for votes for himself on that date in that Gurudwara. He further denied that he had paid Rs. 201/- or any sum as a donation to the Gurudwara in the meeting of 20th December 1951 as alleged, or on any subsequent occasion or date whatsoever, and that any such payment was made to Jaimalsingh Gulabsingh Granthi by him.

18. The evidence on this point is both oral and documentary. None of the petitioners has gone into the witness box to support the allegations made by them in their petition. The documentary evidence consists of two printed pamphlets (Exs. A-9 dated 26th December, 1951 and A-10 dated 27th December, 1951), a report of a news-item in Tarun Bharat of Nagpur (A-11 dated 29th November, 1951) and a statement purported to have been made by Jaimalsingh Gulabsingh Granthi bearing the dated 16th October, 1952 (Ex. A41). The oral evidence is that of Harihar Krishnarao Puradupadhye (A. W. 1), Bhawanishankar Baluram Khandelwal (A. W. 2), Laxmikant Madhaorao Deshpande (A. W. 3), Prithamsingh Paryammal (A. W. 6) Suratsingh Kartarsingh (R. W. 1) and respondent No. 1 Himself (R. W. 5). It may be noted that witnesses A. W. 1, A. W. 2 and A. W. 3 were not cited in the list of witnesses and had appeared without summonses but we do not think that this circumstance need be given any weight in appreciating their evidence.

19. It is common ground that respondent No. 1 was present at the meeting in the Sikh Gurudwara at Akola on 20th December, 1951. A. W. 3 Laxmikant Deshpande stated in his deposition that he was present at the said meeting in the Gurudwara, that respondent No. 1 addressed the meeting, canvassed for

votes for himself and that he announced a donation of Rs. 201 to the Gurudwara. He, however, added that no money was paid by respondent No. 1 in his presence. He further referred to the drawing up of a statement of Jaimalsingh who was said to be the Granthi (Priest) of the Gurudwara, as published in the Pamphlet (Ex. A. 9) in which there is a reference to the payment of Rs. 201 by respondent No. 1 and the passing of a receipt therefor. A. W. 3, on his own showing, was working at the election for Dr. Joglekar, a rival candidate, and he admitted that Jaimalsingh was supporting the candidature of Dr. Joglekar, Laxmikant (A. W. 3) in his deposition referred only to a promise for such payment by respondent No. 1 at the said meeting. His evidence being of one interested in the rival candidate, has to be taken with great caution. Jaimalsingh has not appeared before the Tribunal. The petitioners tried to summon him as their witness, but the summons could not be served on him at the place mentioned in it. The pamphlet (Ex. A. 9) purports to have been printed in the Bharat Press, Akola. Laxmikant (A. W. 3) in his deposition stated that the Bharat Press is not now in existence. Hence the original of Ex. A-9 is not available. With regard to Ex. A-9, Laxmikant deposed that the contents of that pamphlet in Marathi were written by him after Jaimalsingh gave the same in Hindi. He however, stated that Jaimalsingh signed the draft of the pamphlet (Ex. A. 9) in English and took it to the Bharat Printing Press. In the absence of the original, the pamphlet (Ex. A. 9) is sought to be produced for use as secondary evidence thereof. The pamphlet itself shows that the signature of Jaimalsingh is in Marathi and not in English and therefore, it is doubtful whether Ex. A-9 should be accepted as secondary evidence of the draft which, according to Deshpande, bore the signature of Jaimalsingh in English. At the best, the pamphlet by itself would be evidence of such a pamphlet having been published on 26th December, 1951, but it cannot be regarded that the original of the pamphlet was signed by Jaimalsingh and that he had got it printed and published. Reliance was also placed on the other pamphlet (Ex. A-10) which contradicted the contents of Ex. A-9 to show that Jaimalsingh had published Ex. A-9. It cannot be disputed that the pamphlet (Ex. A-9) had been published and circulated, but that by itself would not show that Jaimalsingh was the author of it and that he had caused it to be published. We think that the original of Ex. A-9 has not been proved and in the absence of the proof of the original, Ex. A-9 cannot be admitted in evidence. Ex. A-10 was sought to be brought on record by way of secondary evidence. It purports to have been printed in the Rajasthan Printing Press, Kanhaiyalal Mangilal Joshi (A. W. 11), Accountant of Rajasthan Press, was examined with regard to the original and he has stated that the same was not traceable. In the cross-examination of Laxmikant (A. W. 3), questions were asked with regard to this pamphlet (Ex. A. 10) but he stated that he did not know who got the pamphlet printed and published. Thus, there is no evidence on record with regard to the original of Ex. A. 10 and the signatures thereon. Ex. A. 10 purports to bear the signature of Attar Singh Sethi as the President of the Gurudwara and of Trilochan Singh Sethi as the Secretary of the Sabha. Attarsingh was cited and summoned as a witness on behalf of respondent No. 1, but he was not examined. It appears that Attarsingh was the President of the Gurudwara at that time and Trilokchand Sethi was its Secretary. In the absence of any evidence to prove that the original of Ex. A. 10 was signed by Attarsingh and Trilochansingh, the pamphlet cannot be received in evidence as secondary evidence of its contents.

20. Ex. A-11 is another document in which there is a reference to the incident of canvassing and payment of Rs. 201 by respondent No. 1. Harihar Krishnarao Puradupadhye (A. W. 1) in his deposition stated that he had sent this news as contained in Ex. A-11. He further stated that the report in Ex. A-11 substantially contained the news he had sent to the press. Shri Gajanan Trimbak Madkholkar (A. W. 7) in his deposition stated that he had published the news as supplied by his occasional correspondent Harihar Rao Puradupadhye (A. W. 1). He further stated that the same was published as it was received. He also said that the original communication received from Harihar was not traceable because such communications were usually destroyed after about a month after they are received. This evidence only shows that the contents of Ex. A-11 were substantially the same as those in the original communication by Harihar. This, however, cannot be regarded as sufficient for allowing Ex. A-11 as secondary evidence. Under these circumstances, the three documents (Exs. A-9, A-10 and A-11) can be of no value in considering the question whether respondent No. 1 had canvassed for votes, or had paid or had promised to pay Rs. 201 in the meeting. It appears from the record that respondent No. 1, as a prominent Congress worker, had become a friend of Sikh Refugees and hence, it is not unlikely that Surat Singh had requested

him to be present, at the reading of the Granth-Saheba. It would also not seem probable that the respondent No. 1 would canvass for votes or make any payment or promise therefor on such an occasion.

21. The petitioners also relied on Ex. A-41. It purports to be a statement over the signature of Jaimalsingh. Harihar Krishnarao Puradupaddhe (A. W. 1) stated in his evidence that he had questioned Jaimalsingh about the incident and that Jaimalsingh gave the information which was recorded on a piece of paper. He further stated that Jaimalsingh asked him to take down the information he had given and Bhawanishankar Khandewal (A. W. 2) was asked to write it. Bhawanishankar accordingly wrote the same. The writing was then read over to Jaimalsingh. Some corrections were made therein and after he had admitted it to be correct, Jaimalsingh made his signature below it in the presence of Harihar Puradupaddhe (A. W. 1) and Laxmikant Deshpande (A. W. 3). A. W. 2 Bhawanishankar supports A. W. 1 in regard to the writing by him as stated by Jaimalsingh and the corrections made therein and the reading thereof to him. The witness, however, stated that Jaimalsingh had not put his signature in his presence as he (Bhawanishankar) left the place immediately after he wrote Ex. A-41 for some business of his own in a Bank. He has also stated that Jaimalsingh could write only in Urdu and Gurumukhi and therefore, the document was written by him at his dictation in Hindi.

22. Laxmikant Deshpande (A. W. 3) supported the statement with regard to the writing by Bhawanishankar, the corrections therein and the reading thereof to Jaimalsingh. He further stated that Jaimalsingh put his signature in his presence. It is, however, to be noted that the writing bears the date 16th October, 1952, Neither A. W. 1 nor A. W. 3 stated that the date was put in their presence, nor did they know who put the date. A. W. 1 admitted that that statement was handed over to him and it had been with him since then until it was produced by him before the Tribunal. It is difficult to understand why he was unable to state as to when and by whom the date on the statement was written. On behalf of respondent No. 1, it was pointed out that the statement with regard to the receipt in Ex. A-9 was not at all consistent with the statement in that regard in Ex. A-41. In Ex. A-41, it is clearly stated that on 26th December, 1951, one Rajpalsingh came with the amount of Rs. 201, paid the same to Jaimalsingh asking him to prepare a receipt in the name of the respondent No. 1. It is further stated therein that on 27th December, 1951, Jaimalsingh himself took the receipt to the shop of respondent No. 1 and handed over the same to one Niratsingh, as respondent No. 1 was then otherwise busy. The statement in Ex. A-41 thus clearly shows that the receipt was handed over on 27th December, 1951 and this clearly contradicted the pamphlet (Ex. A-9), which shows that the receipt was given on 26th December, 1951 and not on 27th December, 1951.

23. Ex. A-41 was produced by A. W. 1 while giving evidence and its production was objected to by the Counsel on behalf of respondent No. 1. It was however, allowed to be produced subject to the objection to its admissibility being finally considered after the evidence. The counsel for the petitioners urged that the statement would be admissible under section 32 (Clause 3) of the Indian Evidence Act, as a statement of a person exposing him to a criminal prosecution or to a suit for damages. The Counsel for respondent No. 1, however, pointed out that before such a statement could be received in evidence, it must be convincingly shown that the person who made the statement could not be found and that the maker of the statement knew at the time when he made the statement that he was exposing himself to a criminal prosecution or to a suit for damages.

24. We hence proceed to consider the question of the admissibility of the document (Ex. A-41) Section 32 of the Evidence Act provides some exceptions to the rule that a statement of a person is not admissible unless that person is examined to prove the statement. The provision is of an exceptional nature and must be strictly considered. We have, therefore, to see whether before we can apply section 32, it was satisfactorily proved that Jaimalsingh, whose signature Ex. A-41 bears, was not available for giving evidence. The petitioners replied upon the summonses issued to Jaimalsingh at their instance and the report of the Process-Server that Jaimalsingh was not available at Akola for Service of summons. The said summonses were issued for service at Akola. They also relied on statements made in the affidavits, of petitioner Joshi in support of the applications for issue of summonses to Jaimalsingh. The affidavits were not filed under any order of the Tribunal. They were filed only in support of the applications for issue of summonses. Evidence by way of an affidavit can only be allowed if the affidavit is made under an order

passed under Order 19 Rule 1 of the Civil Procedure Code. The affidavits referred to above could not, therefore, be considered as evidence. The affidavits would only show that Jaimalsingh was not available to the petitioners for giving evidence at the time when the applications for witness summonses were made and summonses were sought to be served on him. The petitioners further relied on the evidence of R. W. 1 Suratsingh Kartarsingh, who said that Jaimalsingh was not to be seen during the last 2½ months before the witness gave evidence and that a new Granthi has been appointed in his place. This statement of his cannot be regarded as sufficient for establishing that Jaimalsingh was not at all available. No attempt seems to have been made by the petitioners to find out the whereabouts of Jaimalsingh elsewhere. Under the circumstances, it cannot be held that Jaimalsingh was a witness, who could not be found at the time when he was to be examined as a witness at the stage when the evidence of the parties was to be recorded. It has also not been shown on record that Jaimalsingh, the maker of that statement (Ex. A-41), was conscious of the fact that the statement made by him in Ex. A-41 would expose him to a criminal prosecution or to an action for damages. In this connection, a reference was made to a ruling in A.I.R. (37) 1950 Privy Council (Savitridevi Vs. Ram Ran Bivoy) in which it was laid down that it must be shown that the maker of the statement was conscious of the fact that he was exposing himself to a criminal prosecution or to a suit for damages at the time when he made the statement. The conditions for receiving such a statement in evidence as required by Section 32 (Clause 3) cannot, therefore, be regarded as having been fulfilled in this case. We, therefore, accept the contention of the Counsel for respondent No. 1 and hold that Ex. A-41 is not admissible in evidence.

25. Besides, it is also to be noted that Ex. A-41 was taken under circumstances which do not inspire any confidence with regard to its truth. A. W. 1 in his deposition clearly stated that he went to Jaimalsingh for his statement, as he was asked by the Petitioner Joshi to collect evidence in support of the allegations in the petition, and that was long after the filing of the petition and when the proceedings were already pending and therefore, Ex. A-41 deserves no value.

26. The petitioners sought to rely on oral evidence with regard to respondent No. 1's offer or promise to make the payment. Such an offer or promise would amount to a corrupt practice under Section 123. In this regard, it was argued on behalf of respondent No. 1 that the case of a promise was not at all made out in the petition itself and that the same must be considered as a ground different from the one set out in the petition in the first instance. There is a good deal of force in this argument. But as discussed above, the oral evidence with regard to the alleged promise does not appear to be reliable and convincing and therefore, we need not discuss this aspect of the case any further.

27. As regards actual payment of Rs. 201 to Jaimalsingh, there is no evidence on record.

28. In appreciating the evidence regarding the allegations of a corrupt practice, we have kept in mind the well-established principle that an allegation of such a type, being in the nature of an offence, has got to be proved beyond reasonable doubt, as in a criminal case. The oral evidence of witnesses A. W. 1, A. W. 2 and A. W. 3 is admittedly of persons interested in the rival candidate Dr. Joglekar and hence the same cannot be accepted as reaching that standard of proof which is ordinarily required. We, are therefore, apart from its inadmissibility, not inclined to attach any probative value to Ex. A-41.

29. The petitioners have failed to prove their allegations with regard to the canvassing at the meeting on 20th December, 1951 by respondent No. 1 and the payment of Rs. 201 by him to Jaimalsingh with a view to induce voters to vote for him. We, therefore, record our findings in the negative on issues Nos. 11, 12 and 13.

30. We now proceed to consider the case of disqualification of respondent No. 1 to his being chosen as a candidate, in other words, whether at the time of the filing of his nomination he was subject to disqualification alleged in paragraphs 6(a) (b) and (c) of the petition.

31. Section 7(d) of the Representation of the People Act (XLIII of 1951) provides that a person shall be disqualified from being chosen as a member of the Legislative Assembly, if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to or for the execution

of any works, or the performance of any services undertaken, by the appropriate Government. The appropriate Government in this case would be the State Government of Madhya Pradesh. The allegations of the petitioners are (a) that respondent No. 1 was the Managing agent or the Managing Director of the Rajasthan Printing and Litho Works, a private limited Company registered under the Indian Companies Act, and as a share-holder and director, he had interest in contracts for the supply of goods viz., stationery, papers and printing material etc., to the State Government of Madhya Pradesh; respondent No. 1 was getting a share by way of commission on sales effected by the Limited Company and hence, he had by himself, interest in the contracts of the company with the State Government of Madhya Pradesh; (b) that respondent No. 1 was a partner in the firm Berar General Agency; the said firm had entered into a contract for the performance of cloth distribution on behalf of the State Government to retailers and held a licence for the same; Respondent No. 1 had, therefore, interest by himself in the said contract for the performance of services undertaken by the State Government; (c) that Respondent No. 1 was the Proprietor of a monthly Journal 'Prawaha' and a bi-weekly named 'Matribhumi'. These newspapers printed Government advertisements on contract basis, respondent No. 1 had, therefore, interest in the said contracts for the performance of services undertaken by the State Government of Madhya Pradesh.

32. After respondent No. 1 filed his nomination paper and when the nomination papers were being scrutinized by the Returning Officer, the petitioners are alleged to have brought to the notice of the Returning Officer certain objections about the disqualification of respondent No. 1, but it is alleged that the Returning Officer summarily rejected the same. The Supreme Court observed: "The allegations in the petition, if made out with such further details as may be necessary, might well prove serious and bring about the setting aside of the election of the returned candidate and further, having regard to the alleged disqualification, which is subsequently to the effect that the returned candidate had interest in contracts with the Government at the relevant dates, it was very necessary that the matter should have been cleared up in the enquiry before the Election Tribunal". It further observed that if was not in the interests of purity of elections that such allegations of disqualification should be completely ignored without enquiry. Therefore, in sending the case back for enquiry and trial, the Supreme Court has directed that these allegations of disqualification should be enquired into.

33. Respondent No. 1 in his supplementary written statement admitted that he was a share-holder and the Managing Director of the Rajasthan Printing and Litho Works, that he was a partner in the firm Berar General Agency of Akola and that he used to run the two Journals. He, however, pleaded that he had severed all his connections with those concerns and therefore, had no subsisting interest in them on the date of the nomination and therefore, he did not suffer from any disqualification on the material dates.

34. Respondent No. 1 in his deposition stated that he had started the newspaper Matribhumi in 1931, that Shri P. B. Gole was then its Editor, that thereafter Mrs. Pramila Bai Oke worked as the Editor till her death and then Shri V. R. Oke became the Editor. He also stated that he was the Proprietor of the said paper, as the whole management was under his final control. He further stated that when he stood for the election, he transferred his interest in this paper to Shri V. R. Oke. He thus admitted that he was the proprietor of the said paper and had interest therein. His case was that he had transferred his interest in it to Shri V. R. Oke, before 15th December, 1951. He has produced Ex. N.A.9 which is a copy of the letter sent by him to Shri Oke. The original is not forthcoming. Shri Oke (R.W.4) has stated that he had destroyed the original. Ex. N.A. 9 runs as follows:—

"I hereby assign all my right, title and interest in Matribhumi concern to you as from to-day. I shall not be in anyway responsible for the affairs of this concern from to-day onwards."

This letter is dated 13th November 1951. Ex. N.A. 8 is another letter dated 14th November, 1951 by Shri Oke to respondent No. 1, wherein he (Shri Oke) acknowledged receipt of the letter of respondent No. 1 dated 13th November 1951 and he further stated that he accepted the assignment, as stated therein. All the assets of Matribhumi, according to Shri Oke, consisted of typewriters and some cases of types. It had no printing press of its own, but the newspaper is printed in the Rajasthan Printing Press. A. W. 10 Balkrishna Gopilal Bhutada stated that the assets of the newspaper were typewriters, papers, furnitures etc. Respondent No. 1 has also said the same thing. Bhutada stated that he had not come across any

record in the office of Matribhumi showing the transfer of proprietorship of respondent No. 1 to Shri Oke. Thus, beyond Exs. N.A. 8 and N.A. 9, there is no document in the records of Matribhumi to show the transfer of proprietorship of the said paper. It is also further to be noted that Shri Oke worked as the Managing Editor when respondent No. 1 was the proprietor. It may also be further observed that Shri Oke himself thereafter transferred the proprietorship of the said paper to Kamalkishore Biyani, son of respondent No. 1. The evidence of Shri V. R. Oke shows that whatever liabilities were there at the time of the transfer of the proprietorship subsisted and were taken over by Kamalkishore Biyani, when he became the proprietor. It is urged on behalf of the petitioners that Matribhumi, its name and also good-will being the intangible property the transfer of the same could only be affected by a registered instrument. We think that there is good deal of force in the argument and that Exs. N.A. 8 and N.A. 9 by themselves did not constitute valid transfer of all the interests of respondent No. 1. It was, however, pointed out by the counsel on behalf of respondent No. 1 that, as the property consisted of movables, as stated by respondent No. 1 in his deposition, the transfer thereof could be valid by delivery of the same to Shri Oke. It was further argued that as there was no consideration for the assignment, the transfer might be treated as a gift and the same could be effected by delivery. There is, however, no evidence on record that any delivery as such was given to Shri Oke. But it is in evidence that Shri Oke was already in possession of the movables referred to above in his capacity as the Managing Editor of the said paper till that date and the question of actual delivery of moveables does not arise, as Shri Oke continued to be in possession of the same, though in another capacity. We, therefore, think that so far as the moveables are concerned, there was a valid transfer, but that would not meet the petitioners' case that the transfer of name and good-will would require a registered instrument of transfer. Shri Oke, as his own evidence shows, only took the paper which he was conducting before as its Editor. The fact that after 1951 the proprietorship of the said paper was transferred to Kamalkishore, son of respondent No. 1, would also indicate that the transfer to Shri Oke was more or less nominal. This conclusion is further strengthened by the admission of Shri Oke that he destroyed the letter of assignment in his favour, thereby showing that he attached very little value to that assignment. It may also be observed that the destruction of the document by Shri Oke, which was the only document of assignment in his favour, also indicates that the assignment was treated as a mere paper transaction. We feel that respondent No. 1 has not established that he had completely divested himself of all his interests in the Matribhumi and that he had no connection with the said paper after 14th November 1951.

35. The above finding by itself would not be sufficient to disqualify respondent No. 1. We have further to see whether the appropriate Government had entered into any contract with Matribhumi and whether respondent No. 1 had any interest therein, within the meaning of section 7(d) of the Representation of the People Act. The petitioners rely for their contention on the publication of two advertisements in the issue of Matribhumi dated 13th December 1951; one of them relates to the Public Service Commission and the other relates to the Civil Courts at Akola. So far as the advertisement from the Court is concerned, as there is no allegation in the petition with regard to the same and as no issue therefor has been joined, it is not necessary for us to consider the same. In regard to the advertisement of Public Service Commission, it was urged, and we think rightly, on behalf of respondent No. 1 that the word "Government" in Section 7(d) meant the executive Department of the State and that the Public Service Commission for the State is an independent body created by the Constitution and is not a part of the State. The publishing advertisements for the Public Service Commission cannot be regarded as an act in pursuance of a contract with the State Government or the performance of services undertaken by that Government. It is neither alleged nor proved that the State Government had undertaken the publication of advertisements of the Public Service Commission. We are, therefore, unable to hold that in respect of allegation contained in paragraph 6(e), respondent No. 1 suffered from any disqualification on the material date.

36. Now, we consider the petitioners' allegation concerning the Rajasthan Printing and Litho Works Ltd., Akola. Respondent No. 1 has admitted that he was the Managing Director and a share-holder in the Rajasthan Printing and Litho Works Limited, which is a private limited company. His case is that by his letter dated 14th November 1951 (Ex. N.A. 27), he had resigned the Managing Directorship and also Directorship of that Company. Ex. A-35 dated 14th November 1951 is a letter by Suganchand Tapadia (R.W. 2) to respondent No. 1, wherein he acknowledged the receipt of the letter of resignation dated 13th November 1951 and informed respondent No. 1 that it would be accepted. In this regard the minutes of the Proceeding Book (Ex. A-30) of the said company at pages 117 and 118

are also relied upon. These show that the letter of resignation of respondent No. 1 was considered and it was resolved that the said resignation be accepted. These minutes bear the dated 14th November 1951 and are signed by Suganchand Tapadia, Radhakisan Toshniwal and Savitridevi Biyani (wife of respondent No. 1). In this connection, our attention was drawn on behalf of the petitioners to pages 114 and 115 of the said book (Ex. A-30). On page 114, the resignation of respondent No. 1 is worded in the same terms as the resolution on page 117. The minutes of the 13th have, however, been scored out. On page 117 of the book, there is also a resolution (No. 2) with regard to the appointment of Shri Suganchand Tapadia as the Managing Director. At page 115 of the book, the resolution No. 2 refers to the appointment of Shrimati Savitridevi Biyani as the Managing Director in place of respondent No. 1. The petitioners have contended that the resignation of respondent No. 1 and the appointment of Suganchand Tapadia as the Managing Director were not genuine transactions, but they were intended to conceal the real state of affairs or in other words, the resignation and the appointment of Tapadia were bogus and nominal. R.W. 2 Suganchand Tapadia gave evidence regarding the question of resignation by respondent No. 1. On being questioned with regard to the letter of resignation, he stated in the first instance that the letter of resignation by respondent No. 1 was given on 14th November 1951. His letter of acceptance dated 14th November 1951 showed that the resignation was given on the 13th of November 1951 and the witness was unable to explain this discrepancy. With regard to the proceedings of the meeting of the 13th, he has stated that the minutes of the meeting of Directors were scored on the 13th November. He, however, could not say if a notice of that meeting had been sent to the Director residing at Hinganghat. He could not say in whose hand the proceedings of that meeting were written. He, however, stated that the writing of the minutes of resolutions Nos. 1 to 3 on page 115 are in the handwriting of a man different from the one who wrote the resolutions at page 115 on the same date.

37. With regard to the scoring of the minutes, Suganchand Tapadia deposed that the same were scored out as it was decided then that until they were satisfied that the procedure adopted was legal, the proceedings should not remain there. He also further stated that counsel Shri Phadke was to be consulted in that regard on the 14th. He stated that there was a letter of resignation dated 13th and the letter was destroyed on that very day. This, however, is sufficiently given a lie to by his own letter (Ex. A-35), wherein he acknowledged the receipt of the resignation dated the 13th November 1951. There is nothing on record acknowledging the receipt of the letter of resignation dated 14th November 1951. It is further to be noted that the proceedings of 13th November 1951 referred to the appointment of Shrimati Savitridevi Biyani (the wife of respondent No. 1) as the Managing Director in place of respondent No. 1, while the resolution of the meeting of 14th November 1951 referred to the appointment of Suganchand Tapadia as the Managing Director. R.W. 2 Suganchand Tapadia in his deposition did not mention anything with regard to the appointment of Shrimati Savitridevi Biyani as the Managing Director on 13th November 1951. The absence of any letter on record showing the acceptance of the resignation dated 14th November 1951, the alleged destruction of the letter of resignation dated 13th November 1951 and the scoring of the minutes of the meeting of 13th November 1951 throw a good deal of doubt with regard to the fact of the resignation of respondent No. 1. There is no record with regard to the issue of notices to the Directors in connection with the meeting of 13th November 1951 or of 14th November 1951. According to R.W. 2 Suganchand Tapadia, notices of these two meetings must have been given to all the Directors as usual, but this statement does not appear trustworthy to show that the Director at Hinganghat had any notice with regard to any of these meetings. Hinganghat is about 150 miles away from Akola. No details of how the notices were conveyed to that Director have also been given. With a view to fill in the lacuna, respondent No. 1 deposed that the proceedings of the meetings in question were under article 93 of the Articles of Association. The heading of the proceedings of the meetings also referred to article 95 of the Articles of Associations. Article 95 (Ex. A-26) validates any resolution in writing signed by all the directors for the time being present at Akola, as if it had been passed in a meeting of Directors. Respondent No. 1 wanted to suggest that no notice in regard to such meetings was necessary. We do not find any warrant for such a procedure in Article 95, which only validates a resolution in writing by the Directors present in Akola. Thus, it is not free from doubt whether such meetings were actually held on the 13th and 14th, as alleged.

38. The petitioners attacked the genuineness of the proceedings book, suggesting that the same could have been written at any time. They have also pointed out to us the pasting of a plain paper in the said book in regard to the minutes

on page 98 by way of an instance of such manipulation with the book. We, however, think that in the absence of any question in that regard to respondent No. 1 to enable him to offer an explanation, if any, we cannot attach any importance to such a circumstance. It is also not understood how Shiolal, who was then not a Director, could have issued any notice of meeting, as deposed to by Sugan Chand. It is only a Director who under the articles of association could have called a meeting. The proposal to appoint Savitridevi as the Managing Director as stated in the proceedings of the 13th November 1951 shows that the alleged appointment of Sugan Chand Tapadia could not have been a genuine affair. Respondent No. 1 referred in his evidence to his consultation with his counsel on the 14th and the giving of letters of resignation and acceptance of the same thereafter with such consultation. This also appears to be inconsistent with the contents of the letter Ex. A-35. The minutes of the meeting of the 13th indicate that the original idea was to show Savitridevi as the Managing Director in place of her husband, respondent No. 1. This might have led to a legitimate inference that the resignation of respondent No. 1 was merely a show. In order to obviate an inference of that kind being drawn, respondent No. 1 must have thought it desirable to name Suganchand as the Managing Director, and thus Suganchand's name was mentioned in the resolution of 14-11-51 as the Managing Director. It is clear from the evidence of Suganchand that he was the Managing Director only in name. He did not know what offices were located in the building of the press and what rents were charged to them. He also stated that he did not know what remuneration he received as the Managing Director. It may also be noted that respondent No. 1 continued to stay in the same premises in the building which he previously occupied as the Managing Director, even after the 14th of November 1951, and he was paying no rent. Suganchand (R.W.2) stated that he did not make any enquiry in that regard. This attitude of indifference or lack of interest of Suganchand towards the affairs of the Rajasthan Printing Press indicate that the transfer of Managing Directorship was merely a hollow and sham transaction. It was argued for respondent No. 1 that the appointment of Suganchand as Managing Director in place of respondent No. 1 should not be considered as an unreal transaction, as Suganchand has in fact been paid remuneration as the Managing Director, as has been seen from his Income-tax return and the assessment order (Exs. N.A. 5 and N.A. 6). Suganchand, however stated that the amount so shown was not received in cash by him, but was adjusted in the accounts by cross-entries. But this is not inconsistent with the ostensible nature of the transfer. A reference was also made to the letter Ex. A-33 by which an intimation was sent to the Registrar, Joint Stock Company and also a letter (Ex. A-36), dated 20th December 1951 from the said Company acknowledging the receipt of the notice of change in the Managing Directorship. This by itself cannot, in any way, be regarded to be inconsistent with the nature of the transaction being hollow. It is however, to be noted that Suganchand (R.W. 2) resigned from the Managing Directorship on 3rd of September 1953, and Savitridevi Blyani was appointed as Managing Director thereafter. This transfer of Directorship in favour of Savitridevi coming after the decision of the Election Petition by the first Tribunal also supports the case of the petitioners with regard to the hollow nature of the transfer. A perusal of Suganchand's deposition leaves no manner of doubt that the alleged transfer of the Managing Directorship in his favour was nominal.

39. It was said by respondent No. 1 in his deposition that he had 17 shares in the Rajasthan Printing and Litho Works Ltd., and he had transferred all of them in favour of Radhakisan Toshnival by his letter Ex. A-28, dated 14th November 1951. Ex. A-29 dated 14th November 1951 is a letter by respondent No. 1 to the Directors intimating to them the transfer of his shares in the name of Shri Radhakisan Toshnival. Respondent No. 1 in his deposition stated that he transferred those shares for Rs. 17,000. Radhakisan Toshnival (A.W. 9) also stated that he had purchased these shares for Rs. 17,000. He produced extracts from his account-book. The account-book in question is a *Nakkal Wahi*. It contains only cross-entries with regard to this transaction. He also further stated that he later on transferred all these shares to Savitridevi and Umadevi, daughter-in-law of respondent No. 1, on 3rd September 1953 for the same amount. There are only cross-entries in his *Nakkal Bahi* for this second transaction. The extracts of his account-book are Exs. A-18 and A-19. It is thus clear that no such consideration was paid to respondent No. 1 by Radhakisan at the time of the transfer or even thereafter. It is also further clear that there was no payment of consideration in cash by Savitridevi and Umadevi at the time of transfer in their favour by Radhakisan on 3rd September 1953. The proceedings book (Ex. A-30) at page 117 contains a resolution with regard to this transfer. It is, however, to be noted that on page 114 in the same book, there is a resolution indicating the transfer of the same shares by respondent No. 1 to Shrimati Savitridevi Biyani and to his letter in that respect dated 13th of November 1951. The said minutes have been scored out on the ground that they were not to be allowed to remain, unless the respon-

dent No. 1 and others were satisfied about their legality after consultation with the counsel. Whatever that may be, it seems pretty clear from these minutes that the respondent No. 1 wanted to show transfers of the shares to someone else and there was to be no real transfer as such. The transfer of the shares to his wife by respondent No. 1 on the 13th, the subsequent change in that regard for a transfer to Radhakisan without any consideration and the subsequent transfer of the shares by Radhakisan to Savitridevi and Umadevi indicate that there was no intention to transfer the shares, but to make a show of transfer. It was, however, pointed out for the respondent No. 1 that the transfer of shares had been noted in the Register of shares of the company (Ex. A-31). No doubt there is an entry of the said transfer in the register and on the basis of this entry, it was argued that the transaction was an oral one and the entry in the Register was conclusive evidence with regard to the genuineness of the transfer. In this connection, a reference to the provisions of the Company Law entitling the transferee-shareholder to claim dividends from the Company on the basis of such entry was referred to. We, however do not consider that the entry in the said register would, in any way, come in the way of our considering the real nature of the transfer. The entry in the Share Register is, therefore, not of much avail and cannot, in any way, outweigh the other circumstances in the case clearly indicating the hollow nature of the transaction. The entry in the *Nakkal Bahi* was sought to be relied upon to indicate the creation of a relation between the respondent No. 1 and Radhakishan Toshniwal as that between a creditor and debtor. The *Nakkal Bahi* cannot be regarded as a book of account regularly kept in the course of business, as contemplated by Section 34 of the Indian Evidence Act and as such, is not relevant. Hence, no weight can be attached to an entry therein.

40. The relation between Radhakisan and respondent No. 1 was debtor and creditor does not appear to be real inasmuch as there was no payment of interest on the said amount by Radhakisan to respondent No. 1. Respondent No. 1 sought to explain the circumstance by saying that Radhakisan was his friend. This explanation however, also does not appear to be acceptable, inasmuch as the charging of interest can, in no way, be regarded to be an unfriendly act between two businessmen. Further it appears from the evidence of the respondent No. 1 that when he became a Minister, he was requiring money, as he was finding it difficult to live within his salary of a Minister and at that time, he stated that he had to borrow money from his wife and daughter-in-law. It is difficult to understand why respondent No. 1 should borrow money from his wife and daughter-in-law, if according to him, he had his own funds lying with Radhakisan. The absence of any evidence that respondent No. 1 had at any time demanded monies from Radhakisan lends support to the case about the transaction of transfer of shares being hollow. It is further stressed by the counsel on behalf of the petitioners that no regular transfer forms with stamps therefor have been used and that the transfer by means of letters, which could be written at any time, could not effect a valid transfer. We think, that there is some substance in this contention and if a real transfer was intended, the proper forms with proper stamps would have been used. Radhakisan has stated that he had not collected dividends on these shares while they were with him. Suganchand had stated that the Directors were declaring dividends from time to time. We have also nothing on record to show as to who was in possession of the said shares during that period. The friendly relations between Radhakisan (A.W. 7) and respondent No. 1 would also render it easy to have a nominal transfer of the shares in the name of Radhakisan. It is further significant to note that the transfer of these shares to the names of the wife and daughter-in-law of respondent No. 1 by Radhakisan synchronised with the appointment of Savitridevi as the Managing Director in place of Suganchand. Both these events took place on 3rd September 1953. This suggests that the original transfer of shares and resignation of the Managing Directorship were only a device to avoid a disqualification under Section 7(d) of the Act. We, therefore, find that the resignation of Managing Directorship and the transfer of shares were both unreal and did not, in fact, put an end to the interest which the respondent No. 1 had in the Rajasthan Printing Press prior to 15th November 1951 and that he continued to have that interest even subsequently.

41. The petitioners have further to prove that respondent No. 1, as a share-holder and Managing Director, had interest in a contract of supply of goods to, or for the performance of services undertaken by the appropriate Government. In this regard, the petitioners rely upon the publication of the electoral rolls of the State Assembly by this press and for supply of stationery to the Deputy Commissioner, Akola. Suganchand in his deposition admits that some work from Government was being entrusted to the Rajasthan Printing Press at the time when respondent No. 1 stood for election. It also appears

from the supplementary written statement of respondent No. 1 that orders were placed with the Press for printing by Government Officers and Government also used to purchase some materials from the Company. The extracts of accounts from the cash book of the Company are filed. Respondent No. 1's only contention was that there was no continuing contract or standing order as such. A.W.-11 Kanhaiyalal, Accountant in the Rajasthan Printing and Litho Works, stated that there was a *khata* in the account-book of the press in the name of the Deputy Commissioner, Akola. The extract is A.-15. He further stated that there was also a *khata* of the Government Printing Press and the extracts therefrom are Ex. A.-22 and A.-25. It appears that an amount of Rs. 141/6/6 was received from the Deputy Commissioner's Office on 22nd February 1952, by the Company. It has reference to certain bills. It is, however, not clear what the bills were for. On behalf of the petitioners, an attempt was made to produce from the Deputy Commissioner's office certain documents purporting to be the bills. No question with regard to the said bills was put to any of the witnesses in the case and the said documents have remained unproved.

42. Ex. A.-22 is the extracts of the *Khata* of the Government Printing Press, Nagpur and it appears therefrom that an amount of Rs. 161-2-0 was received by the Press on the 30th November 1951, for printing electoral rolls. The publishing of electoral rolls is, no doubt, work performed for the Government. It is obvious that the order for the printing of the said electoral rolls must have been placed with the Press long before the elections were to be held and the rolls also must have been printed and published a considerable time before the Election. The printing of the rolls must be regarded as having been done under a contract with the State Government and as the payment for this work was not made till 30th November 1951, the said contract must be deemed to be subsisting on 15th November 1951, the date of the nomination. The main argument on behalf of the respondent No. 1 is that there must be a continuity of contracts for a disqualification under Section 7(d) and the substance of one contract cannot be regarded as falling within the mischief of that Section. In this connection a reference was made to the ruling in 1954 A.I.R. *Supreme Court* 236 (*Chatturbhuj Vithaldas Jasani V. Moreshwar Parashram*). We, however, do not find any support in that case for the proposition advanced by the learned Advocate for the respondent No. 1. On the contrary, it is clearly pointed out that "a contract for the supply of goods does not terminate when the goods are supplied, and that it continues in being till it is fully discharged by performance on both sides. It cannot be said that the moment a contract is fully executed on one side and all that remains is to receive payment by one from the other, that the contract terminates. There is always a possibility of the liability being disputed before actual payment is made and the vendor may have to bring an action to establish his claim to payment. The existence of the debt depends on the contract and cannot be established without showing that payment was a term of the contract." On the other hand, this case supports the proposition that if even a single contract is subsisting on the date of the nomination, it would attract the application of section 7(d) of the Representation of the People Act 1951. Hence, having regard to the fact that the payment of charges of printing of the State Assembly Voters' lists was outstanding at the time of the filling of the nomination paper, the respondent No. 1 must be deemed to have an interest or share in the said contract with the appropriate Government. We, therefore, think, that the case clearly falls within section 7(d) in respect of this item. As regards the supply of materials or stationery under any contracts, there is no evidence on record with regard to supply of any materials of stationery to Government or any of its officers under any contracts and hence, no disqualification in respect of this item has been proved.

43. Respondent No. 1 in his deposition referred to the firm 'Berar General Agency' and stated that he was one of its partners. It appears from his deposition that the said firm was registered and was doing a certain kind of business and there was also an unregistered firm of the same name doing business in cloth. It also appears that this firm carrying on cloth business had an 'A' class licence under the Central Provinces and Berar Cotton Cloth Trade Regulation Order 1948. It further appears from the evidence that an association named whole-sale Cloth Dealers' Association of A class licence-holders was formed for the purpose of importing and distributing cloth in the district and the Berar General Agency Cloth Shop was a member of that Association. The function of this Association was to lift up the quota allotted to the State Government by the Central Government, from the various mills and the importing of the cloth and the distribution of the same appears to be a duty undertaken by the State

Government and the work of distribution of cloth was entrusted to this Association of 'A' class licence holders. Memo No. 4025/XXV, dated Nagpur; the 10th of July 1951 from the Secretary, Government of Madhya Pradesh, Civil Supply Department to all the Deputy Commissioners, copy of which is Ex.A-12, in the case, refers to the appointment of the Association as importers. It appears clear from the statement in that Memorandum that the said firm had undertaken the work of importing a portion of the quota allotted to the State Government by the Central Government. It further appears that an agreement was to be entered into between the importers on one side and the State Government on the other in this connection. The copy of such agreement is part of Ex.A-12. The said document bears the heading as "Conditions of agreement" between the State Government and the importers. It also further appears from Clause 11 of that document that the distribution of cloth was to be a monopoly of the Association with which the agreement was entered into. Respondent No. 1, however, stated that he had no concern or interest in the Berar General Agency after the 14th of November 1951, as he resigned from it on that date.

44. Ex. N. A. 10 is a letter written by respondent No. 1 to the said firm on 14th November 1951. It runs thus:—

"As already agreed between us I hereby retire from the above partnership concerned with effect from today. I cease to have my interests in the above partnership and shall not be responsible in any way in respect of the business of partnership onward which pleases note. I request that my accounts may be duly settled."

Ex. N.A.11 is another letter, dated 14th November 1951, on behalf of the Berar General Agency to respondent No. 1. It states that the letter of resignation had been received and the same had been filed. On the strength of these two letters, respondent No. 1 claims that he had served his connection with the said Agency. There is no other document on the record in support of this severance of interest. There is also nothing to show that any account as such was settled at that time. In the absence of evidence of settlement of accounts as such, it is not possible to accept the case of respondent No. 1 with regard to his alleged resignation of his partnership. It, however, appears that no intimation with regard to the withdrawal of respondent No. 1 from the partnership was given to the Textile Commissioner till after 23rd January 1953. It appears that respondent No. 1's name was dropped from the list of partners in the licence on 24th March 1953. (See Ex. N.A. 12 and Ex. A.-2). Hence, it appears that he continued to be a partner till that date and was so shown also in the licence. Respondent No. 1 has stated that he had told the General Manager Shirolal to intimate to the authority that his name as a partner in the licence should be deleted and that this direction was not acted upon. The resignation from a partnership by a letter is not a mode recognized by law. Section 32 of the Partnership Act provides that a partner may retire with the consent of all the other partners, or in accordance with an express agreement by the partners, or where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire. It is clear from the deposition of respondent No. 1 himself that he did not consult the other partners at the time when he wrote the letter of resignation. Hence, no question of their consent arises for consideration. There was also no notice to the other partners of his intention to retire. In explaining the expression "as agreed between us" in Ex. N.A. 10, respondent No. 1 has stated that the agreement was with Shirolal, who was then only a Manager and not a partner. Hence, the retirement of respondent No. 1 from the partnership, as alleged, cannot be regarded, in any way, legal and valid. The entry of his name as a partner in the licence till 24th March 1953 also indicates that he was regarded as a partner at least till that date. There is no other overt act of his to indicate that he had ceased to be a partner in the said firm. It is also to be noted that the letter only refers in general terms to the Berar General Agency. It is not clear whether it was in respect of the registered firm or the unregistered firm. The dubious nature of such a letter also lends support to the petitioners' case that it was only a colourable retirement and was not in any way operative in law. In this connection, it may also be noted that Shirolal, with whom the alleged agreement had taken place, is not examined. He was cited and summoned as a witness. On a consideration of the circumstances and the evidence on record, we find that respondent No. 1 has failed to prove that he had ceased to have an interest in the partnership of Berar General Agency on the date of his nomination.

45. The further question that arises for consideration is whether, as a partner in the said firm, he had an interest or share in contracts for the supply of goods to, or for the performance of any services undertaken by the State Government. The firm held an "A" class licence. It was urged that the licence by itself cannot be a contract as contemplated by Section 7(d) of the Representation of the People Act. On behalf of the petitioners, it was argued that the licence in this case be regarded as a contract. Apart from the question whether the A class licence was a contract or not, there is in this case a further contract of the Association with the Government in regard to the import and distribution of cloth and the Berar General Agency was a member of that Association. As observed above, it is in the evidence that the Association was doing this work for the Government and as a member of that Association, the Berar General Agency also must be deemed to be doing that work. It is, however, argued for respondent No. 1 on the evidence of A.W.-8, Yeshwantraaj Balayya Yangle that no profit was made by the Association from this work of importing and distributing cloth. There is, however, nothing in the statement of respondent No. 1 in his deposition on this point. Respondent No. 1 relied on the circumstance that no profit was derived by the association for doing the work of import and distribution of cloth. It is, however, to be noted that the Association had a monopoly in that respect. This monopoly in itself is a substantial interest, apart from the fact whether it resulted in pecuniary gain or not. It must also be noted that as a holder of 'A' class licence, Berar General Agency received cloth as a member of the Association and that dealings in that cloth would lead to some pecuniary gain. It is thus clear that Berar General Agency, as a member of the Wholesale Cloth Dealers' Association, was doing the work of the State Government and respondent No.1 had an interest in it as a partner. In this connection, a reference may be made to a case in Election Law Reports Volume IX part V page 471. There it is pointed out that Section 7(d) should be liberally construed and the beneficial effect of it should be allowed to be whittled down by subtle arguments based upon a conflict of powers or the law of agency. In the present case, there was an agreement between the Association on one side and the Government on the other and hence, it cannot be regarded to be a mere case of licence and there being consideration for the said agreement in the form of monopoly to the Association, the case clearly satisfied the requirements of a valid contract under the Law of contract and falls within the meaning of Section 7(d) of the Act. It may also be noted that the interest in the contract as required by Section 7(d) need not be always pecuniary. It must, however, be material and not sentimental. In this connection, reference may be made to *I.L.R. 47 Bombay 809 (K.E. Naiman Vs. Municipal Commissioner of Bombay)*. As observed above, in this case there was a material and pecuniary interest and hence, respondent No. 1 can be said to have had interest in the contract or in performance of a service undertaken by the State Government. He thus suffered from a disqualification under Section 7(d) of the Act.

46. We accordingly record our finding on the other issues.

47. In view of our findings that respondent No. 1 was disqualified for being chosen as a member, of the Legislative Assembly of Madhya Pradesh, his election has to be set aside. Further we hold that his nomination was improperly accepted and that it is difficult to say how the votes recorded in favour of respondent No. 1 would have been cast. We are, therefore, of opinion that the result of the election has been materially affected by the improper acceptance of the nomination of respondent No. 1. The election has thus become wholly void.

48. As regards the costs, the petitioners have no doubt succeeded in their petition. But in assessing costs to which they would be entitled, they have failed to substantiate their allegation of corrupt practice against respondent No. 1. After considering all the circumstances of the case and the time occupied in the prosecution of the petition we think that respondent No. 1 should pay to the petitioners Rs. 300 by way of costs. We, therefore, pass the following order.

ORDER

The petition is allowed. The election of respondent No. 1 is declared to be void and the election for the single member Akola Constituency is declared to be wholly void.

Respondent No. 1 do pay to the petitioners by way of costs an amount of Rs. 300 (Three hundred). All the respondents will bear their own costs.

(Sd.) R. D. SHINDE, *Chairman.*

(Sd.) Y. K. GHASKADBI, *Member.*

(Sd.) A. A. ADARKAR, *Member.*

AKOLA;

The 28th November 1953.

[No. 19/158/52-Elec. III/13976.]

By Order,

P. S. SUBRAMANIAN, Secy.